

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
)	
Administration of the North American)	CC Docket 99-200
Numbering Plan)	
)	
UniPoint Enhanced Services)	
d/b/a PointOne)	
Petition For Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding)	
Access to Numbering Resources)	

REPLY COMMENTS

I. INTRODUCTION AND SUMMARY

UniPoint Enhanced Services d/b/a PointOne submits the following reply to various comments filed in response to with respect to PointOne's petition seeking waiver of section 52.15(g)(2)(i) of the Commission's rules to obtain direct access to numbering resources from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator.¹ The FCC granted SBCIS a similar waiver earlier this year and indicated that

¹ *UniPoint Enhanced Services d/b/a PointOne Petition For Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, filed March 2, 2005 (*PointOne Waiver Petition*).

“to the extent other entities seek similar relief” the FCC “would grant such relief to an extent comparable to what [it] set forth in [the SBCIS] Order.”²

In requesting the present waiver, PointOne has demonstrated good cause and has otherwise met all the requirements necessary for the FCC to grant the same waiver it granted SBCIS. PointOne’s petition presents facts and circumstances similar to those presented by SBCIS and other petitioners, and commenters have failed to assert valid reasons for denying PointOne’s limited waiver request. As stated by SBCIS in its comments, the FCC should allow all the VoIP petitioners to have the same direct access to numbering resources that the Commission made available to SBCIS.³ Finally, PointOne agrees that until the FCC adopts comprehensive rules addressing numbering assignment, use and optimization for all VoIP providers, PointOne, as well as all other petitioners, should be subjected to the same numbering rules and requirements, so that all VoIP providers can compete fairly on a level regulatory playing field.

II. DISCUSSION

A. PointOne is Providing Services Similar to SBCIS and Other petitioners

In its comments, Qwest argues that PointOne is not similarly situated to SBCIS and therefore should not be entitled to numbers on the same basis

² *In the Matter of Administration of North American Numbering Plan*, Order, CC Docket No. 99-200, FCC 05-20 (*SBCIS Waiver Order*).

³ SBCIS Comments at 1.

as SBCIS. Qwest's arguments are baseless and do not otherwise demonstrate that PointOne has failed to show good cause for grant of the limited waiver requested. Similar to SBCIS and other petitioners, PointOne is providing broadband originated IP-enabled voice services. PointOne's StarPoint IP service, offered to both residential and business customers, is a full feature enhanced digital voice service. StarPoint IP offers broadband users a suite of services that include enhanced features such as reservation-less, multi-user conferencing, auto attendant, a web portal that enables subscriber service activation and call management, as well as the ability to make 911 emergency service calls. These innovative services are offered in addition to the voice service that some anachronistically refer to as "local" and "long distance" calling.

As explained in its Petition (in the same detail as explained by SBCIS in its waiver petition), PointOne is confronted with the same inefficiencies and obstacles of which SBCIS complained in its petition because of its status as an unregulated, non-carrier. Despite Qwest's unfounded assertions, PointOne is similarly situated to SBCIS and is offering the same types of IP-enabled services, therefore there is good cause to grant this waiver and doing so is in the public interest.

B. The FCC Should Not Consider Issues Unrelated To Numbering Resources as Part of the Waiver Process

Qwest's apparent ire is related directly to a billing dispute between itself and PointOne's vendors.⁴ PointOne's request for a limited waiver of the Commission's numbering rules is not the appropriate forum for Qwest to seek to resolve compensation disputes. First, contrary to the arguments presented by Qwest, there is no certainty regarding the appropriate compensation mechanisms and regulatory structure for IP-enabled services. In fact, Qwest is well aware that the Commission has comprehensive proceedings underway that will resolve many of the issues that Qwest seeks to raise as relevant in the instant waiver request. In addition to the on-going FCC proceedings regarding intercarrier compensation and IP-enabled services, Qwest can resolve these billing disputes through commercial negotiations and arrangements. Moreover, Qwest's reliance on the FCC's *AT&T VoIP Order*⁵ as having established conclusively the regulatory status of PointOne's IP-enabled services as well as past and future access charge liability ignores the very clear statements of the FCC with regard to the limits of that order.

Specifically, the Commission stated:

We believe that the equitable inquiry [regarding the retroactive application of access charges] is inherently fact-specific. For example, the nature of a particular phone-to-phone service offering, when the service was introduced, the purported basis

⁴ See Qwest Comments at 2 (referring to its dispute with PointOne over access charge liability).

⁵ See *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) (*AT&T VoIP Order*).

for detrimental reliance on Commission pronouncements, and the course of dealings between the parties in a dispute all may prove relevant to the analysis. Accordingly, if disputes arise, the question whether access charges can be collected for past periods may be addressed on a case-by-case basis.⁶

Qwest's attempt to condition grant of PointOne's waiver request on resolution of compensation disputes is turbid and misplaced. Moreover, the Commission determined in the *SBCIS Waiver Order* that consideration of issues unrelated to numbering requirements in the context of a waiver request was unnecessary.⁷

C. Grant of PointOne's Waiver Request Should Not Be Dependent on Creation of A Separate Corporate Entity

In its Comments, Qwest insinuates that PointOne's corporate structure inherently disqualifies it from being able to meet the Commission's waiver standards.⁸ There are no legal or policy reasons that would compel the Commission to force PointOne to offer its various IP-enabled services through a "discrete business corporation, division or operation dedicated solely to the provision of IP-enabled services"⁹ as a condition precedent for access to numbering resources. Such assertions by Qwest are the height of hypocrisy. In other legal and regulatory venues, Qwest has repeatedly argued that separate subsidiary requirements create barriers to entry and discourage investment, especially in the provision of advanced communications. To force a separate

⁶ *AT&T VoIP Order* at para. 23 (citations omitted).

⁷ *SBCIS Waiver Order* at para. 9 ("We do not find it necessary, however, to condition SBCIS' waiver on compliance with requirements other than numbering requirements.").

⁸ Qwest Comments at 4-5.

⁹ *Id* at 4.

affiliate requirement on PointOne or any other VoIP provider would be to impose an overly regulatory and unduly burdensome requirement on VoIP providers. Qwest's arguments are a self-serving attempt to impose additional costs on PointOne and to delay its ability to interconnect with the public switched network (PSTN) in the most economically efficient manner.

In addition to its feckless arguments about the need for a separate subsidiary, Qwest suggests in its Comments that this separate corporate entity would prevent PointOne from continuing its "charade" to hide the "disturbing" fact that it is both a common carrier and an IP-enabled service provider.¹⁰ PointOne urges the Commission to ignore Qwest's attacks against PointOne as anti-competitive trifle. Qwest's argument that PointOne is a common carrier and therefore not entitled to grant of its waiver request are insufficiently reasoned and illogical and therefore merit no consideration by the Commission. Qwest is again attempting to thwart PointOne's valid business plans to offer broadband originated consumer VoIP applications by raising disputes that are appropriately resolved in other forums or proceedings. Rather than denying PointOne the same ability to obtain numbers and direct PSTN interconnection granted to SBCIS as suggested by Qwest, the Commission should grant PointOne's waiver request and move forward expeditiously with its comprehensive IP-enabled services rulemaking and reform of intercarrier compensation. Until the Commission completes these important proceedings, PointOne urges the Commission to adopt interim rules, decisions, and waivers that will encourage more providers like PointOne to make investment and business decisions in the

¹⁰ Qwest Comments at 2.

critical IP infrastructure that will ensure all consumers have access to the most robust IP-enabled services and applications. Qwest fails to show why PointOne's decision to deploy an all IP network and perfect the delivery of IP-enabled voice applications across this network prior to offering broadband originated IP-enabled voice services is contrary to the public interest.

D. The FCC Should Not Impose Additional Requirements on Current and Future Waiver Requests

In the *SBCIS Numbering Waiver Order*, the Commission expressly imposed the requirement that SBCIS be fully capable of satisfying the facilities readiness requirement on SBCIS and stated that SBCIS “should be able to satisfy this requirement using the same type of information submitted by other carriers.”¹¹ The Commission recognized, however, that because SBCIS is an information service provider, and not a common carrier, SBCIS would not ordinarily enter into state-approved interconnection agreements with carriers. Accordingly, the Commission stated that if SBCIS is unable to submit a state-approved interconnection agreement, SBCIS should submit “evidence that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services.”¹²

PointOne stated in its petition that it is willing and able to comply with the same facilities readiness requirements imposed on SBCIS under the

¹¹ *SBCIS Waiver Order* at para. 10.

¹² *Id.*

Commission's rules and the *SBCIS Waiver Order*.¹³ As observed by SBCIS, PointOne as well as other petitioners expressed the possibility that it could show facilities readiness through means other than a state-approved interconnection agreement with an ILEC or a tariffed connectivity service from an ILEC. In such cases, PointOne as well as the VoIP petitioners ask the Commission to accept other appropriate evidence of facilities readiness, such as "traffic exchange agreements with any LEC serving the relevant geographic area" or other similar forms of evidence.¹⁴

PointOne notes that SBCIS does not object to these requests "so long as SBCIS is afforded the same opportunities to purchase connectivity services from a diverse group of providers." It is important that the FCC accept what SBCIS acknowledges in its comments -- that competition and convergence will change interconnectivity options thereby enabling connectivity services through a wide variety of "untraditional" mechanisms and types of providers. As eloquently stated by SBCIS, "it would be most unfortunate if the Commission, with the intention of promoting competition through the deployment of innovative, new IP-based services, unwittingly restricted competition in the market for IP-PSTN connectivity services by forcing VoIP providers to deal only with carriers that offer these services through state-approved interconnection agreements or federal/state tariffs." PointOne agrees.

¹³ Contrary to SBC's charge in its Comments, PointOne committed in its waiver request to comply with all of the Commission's numbering rules and requirements and affirms that commitment in these Reply Comments.

¹⁴ PointOne Petition at 7-8. *See* Dialpad Petition at 7; Nuvio Petition at 2 n.1; RNK Petition at 14-15; VoEX Petition at 6-7.

E. Other Reporting Requirements

In its comments, the Maine Public Utilities Commission asks that the FCC require the petitioners “to provide the relevant state commission with both regulatory and numbering contacts (name, phone number, and e-mail) at the time they first request numbering resources in a particular state.”¹⁵ PointOne does not object to this request and agrees with the Maine PUC that company contact information will enable states to protect adequately the state’s numbering resources. To the extent that the Commission limits this “reporting requirement” to the information requested by the Maine PUC, PointOne agrees such a requirement would not be unreasonable.

III. CONCLUSION

For all of the foregoing reasons, PointOne respectfully requests that the Commission grant PointOne’s limited waiver request to obtain direct access to numbering resources from NANPA and/or the PA.

Respectfully Submitted,

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¹⁵ Maine PUC Comments at 3.

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